

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                        |   |                 |
|------------------------|---|-----------------|
| KEN'S APPLIANCES       | ) |                 |
|                        | ) |                 |
| COMPLAINANT            | ) |                 |
|                        | ) |                 |
| v.                     | ) | CASE NO. 96-611 |
|                        | ) |                 |
| GTE SOUTH INCORPORATED | ) |                 |
|                        | ) |                 |
| DEFENDANT              | ) |                 |

O R D E R

On December 16, 1996, Ken's Appliances ("Complainant") filed with the Commission a formal Complaint alleging that GTE South Incorporated ("GTE South") has, for approximately 36 months, provided inadequate service to Complainant. In his Complaint, Complainant requests the Commission to inspect GTE South's service and repair records for his account.

On January 15, 1997, GTE South filed its Answer to the Complaint. In its Answer, GTE South admits that Complainant has made several complaints regarding his telephone service over the past few months. GTE South contends, however, that "in each instance the Company has responded to those reports and has either corrected the problem in a timely manner or has provided a service credit as appropriate." GTE South seeks dismissal of the Complaint on the grounds that Complainant has failed to state with particularity how GTE South has failed to provide adequate telephone service.

On April 7, 1997, Complainant filed his response to GTE South's Answer. In this response, Complainant states that the following services "have continuously failed to operate properly or were entirely unusable": One Party Line, Automatic Busy Redial, Call Waiting, and Caller ID. Complainant states that the alleged problems began in April of 1995 when GTE South changed his account from residential to business. Complainant asserts that "[t]he defendant has acknowledged repair service or customer service complaints, and they are reported since 1995, to which the defendant has responded or provided a service credit for these occurrences, should not relieve the defendant to provide adequate telephone service to the complainant [sic]."

On April 29, 1997, the Commission ordered GTE South to respond to Complainant's April filing. GTE South's response was filed with the Commission on May 8, 1997, and on June 25, 1997 GTE South filed additional information concerning the matter. GTE South asserts that "[t]here are technical limitations to these services, which GTE has explained or attempted to explain to the Complainant previously." GTE South further states that it "has made every attempt to satisfy this customer." According to GTE South, "Complainant has been issued four business Service Performance Guarantees of one hundred dollars each during the history of [his] account. . . ."

On June 30, 1997, Complainant filed his response to GTE South's June filing. In his response, Complainant states, inter alia, that he spoke with GTE South on June 25, 1997 and, on June 26, 1997, GTE South conducted "extensive testing" but was unable to detect any problems. Complainant further states that "GTE South verifies service performance guarantees have been issued as far back as June 1995." Because

Commission Staff sought clarification of the issues raised in this case and because GTE South and Complainant notified the Commission in writing of their willingness to meet with the Commission to discuss them, the Commission, on its own motion, scheduled an informal conference.

The informal conference was held July 17, 1997 at the Commission's offices located at 730 Schenkel Lane, Frankfort, Kentucky. Complainant notified the Commission of his decision not to attend the conference shortly before the conference began. The conference was, therefore, held in Complainant's absence. During the conference, Commission Staff requested that GTE South file additional information concerning Complainant's account.

Subsequently, Complainant filed a letter dated July 30, 1997 wherein he claims that "the continued inoperability of the services GTE South is being paid for continue to affect the income potential of the business of Kens [sic] Appliances." Furthermore, Complainant asserts that "[u]nless GTE South can correct or address these continued service problems, Kens [sic] Appliances see's [sic] no resolution of these events."

On July 31, 1997, GTE South filed the additional information that Commission Staff requested during the informal conference. In this filing, GTE South "strongly suggests that if the limitations of its CLASS or Smart Call services are unacceptable, Complainant should consider taking GTE's Satisfaction Guarantee . . . and discontinue subscribing to those services."

On August 28, 1997, Complainant filed a letter informing the Commission that GTE South, in response to Complainant's claim that the alleged problems were

continuing, was conducting yet another test. Furthermore, Complainant informed the Commission that GTE South issued him another "service performance guarantee" on August 13, 1997. Complainant, nevertheless, "requests to be re-imbursed [sic] for the expenses paid for these services as described in [the] Complaint." His request does not, however, include the amount he claims is owed by GTE South and it does not include any evidence to support his claim that reimbursement is appropriate.

Because this case involves factual disputes, the Commission scheduled a hearing on the matter. On September 19, 1997, GTE South filed a motion seeking reconsideration of the Commission's Order scheduling the hearing. In its motion, GTE South seeks dismissal of this case or, alternatively, a ruling on the merits of the Complaint without resort to a hearing.

On September 23, 1997, Complainant filed with the Commission a letter, which the Commission treats as a motion, requesting cancellation of the hearing and a decision based upon the record. In his letter, Complainant also informs the Commission that GTE South has issued him another "service performance credit."

The Commission, having reviewed the evidence of record and being otherwise sufficiently advised, finds that there is no evidence in the record that substantiates Complainant's allegations. Complainant has declined the opportunity to cross-examine GTE South witnesses at formal hearing to demonstrate: 1) how GTE South's service has been inadequate, if indeed it has been, and 2) why, if service has been inadequate, the monies already paid to Complainant by GTE South are not sufficient to make him

whole. Consequently, the parties' motions seeking cancellation of the hearing should be granted and this case should be dismissed.

IT IS THEREFORE ORDERED that:

1. Complainant's and GTE South's motions seeking cancellation of the October 10, 1997 hearing are granted.

2. The hearing is cancelled and this case is hereby dismissed.

Done at Frankfort, Kentucky, this 3rd day of October, 1997.

PUBLIC SERVICE COMMISSION

Linda K Breathitt  
Chairman

Er J Helms  
Vice Chairman

B. J. Helton  
Commissioner

ATTEST:

Don Mills  
Executive Director